



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LONDONDERRY ADMINISTRATIVE
EMPLOYEES ASSOCIATION

Complainant

v.

TOWN OF LONDONDERRY

Respondent

CASE NO. M-0656:2
M-0656:3

DECISION NO. 93-73

APPEARANCES

Representing Londonderry Administrative Employees Assoc.,

Vincent Weners, Esq.

Representing Town of Londonderry:

Mark T. Broth, Esq.

Also appearing:

Roy E. Melnick, L.A.E.A.

Joseph E. Ryan, L.A.E.A.

Kenneth E. Lynch, L.A.E.A.

Gerald M. Gillespie, L.A.E.A.

Jared S. Clark, Town of Londonderry

Richard J. Bannon, Town of Londonderry

BACKGROUND

The Londonderry Administrative Employees Association (Association) filed unfair labor practice (ULP) charges against the Town of Londonderry (Town) on March 15, 1993 alleging violations of RSA 273-A:5 I (g), (h) and (i) resulting from an alleged failure to adhere to an agreed upon reorganization plan. The Town filed its answer on March 19, 1993 as well as its own ULP on May 1, 1993, alleging a violation of RSA 273-A:5 II (f) resulting from the Association's alleged breach of the terms of the collective bargaining agreement (CBA) reached between the parties. The Association filed its answer on May 19, 1993 after which both matters were consolidated and heard by the undersigned hearing

officer on May 25, 1993.

FINDINGS OF FACT

1. The Town of Londonderry is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Londonderry Administrative Employees Association is the duly certified bargaining agent for certain administrative and supervisory employees of the Town.
3. On July 13, 1992 a reorganization plan for the Police Department, recommended by the International Association of Chiefs of Police, was submitted to the Selectmen. On July 27, 1992, the Selectmen considered and voted on (approved) that reorganization plan which ultimately eliminated two lieutenant positions which then became two captain positions. The one pre-existing captain position was designated as "commander," a position determined to exist so long as it is filled by the incumbent captain, Kenneth Lynch. Contract Article 1.7 (a) provides that the title of "commander" shall be eliminated when it is no longer filled by Lynch. (Town Exhibit No. 8). The "Commander" position is compensated by an additional annual stipend of \$200 more than the salaries of the two newly created captain positions. Lynch has received that stipend as well as a new badge designating him as "commander."
4. The Selectmen, at their August 24, 1992 meeting, voted to accelerate the implementation of the reorganization plan from October 25, 1992 to August 31, 1992. (Town Exhibit No. 7).
5. On September 1, 1992, Chief Richard J. Bannon issued a memo announcing (1) the reorganization of the department on August 31, 1992, (2) that Lieutenants Melnick and Ryan had been "promoted," and (3) that Captain Lynch's title had been "changed to commander." Thereafter Lynch requested that the Chief announce his change of title as a "promotion." The Chief declined to do so. (Union Exhibit No. 1).
6. On October 22, 1992, Lynch filed a written grievance with Town Administrator Jared Clark claiming that the reorganization resulted in his being demoted in violation of Article XV of the CBA. After Lynch received no satisfaction at the department head or town administrator levels, he appealed his grievance

to the Board of Selectmen who heard the case at their January 7, 1993 meeting. The Selectmen ultimately rejected the grievance.

7. Town Administrator Clark acknowledged using the term "promoted" when discussing the reorganization plan with Lynch (Union Exhibit No. 3, pg. 20), although he attached no particular significance to it, saying "commander" was "ceremonial" and "should not be construed as a promotion." (Town Exhibit NO. 8).
8. The Londonderry Police Department Rules and Regulations define "promotion" a "a change in the employment status of a member or employee to a position of greater authority and responsibility of higher classification." The designation of Lynch as "commander" reaffirmed his position as the individual to take a command of the department in the Chief's absence or disability. This is unchanged from his responsibility to do so before the reorganization was implemented.

DECISION AND ORDER

The Town's Motion to Dismiss is GRANTED. The reorganization occurred on August 31, 1992. Regardless of the degree of attention paid to the preliminary and not-yet-final steps of the reorganization plan at the hearing stages, its implementation on August 31, 1992 cannot go unnoticed. The ULP must have been filed within 6 months of that date. RSA 273-A:6 VII. It was not; therefore, it is dismissed.

Likewise the Town's ULP is DISMISSED. Given the exhibits (e.g. Union Exhibit No. 3), it is clear that there was both discussion and, subsequently, confusion about the concept of "promotion" to the commander's position. Under these circumstances, the filing of the March 15, 1993 ULP by the Association cannot be said to have been in bad faith, as claimed by the Town.

No further relief is considered or awarded.

So Ordered.

Signed this 15th day of June, 1993.


EDWARD J. HASELTINE
Hearing Officer